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VIA ELECTRONIC DELIVERY AND FIRST CLASS U.S. MAIL

January 27, 2012

Catrice C. Williams, Secretary
Department of Telecommunications & Cable
Commonwealth of Massachusetts
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Re: Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts, D.T.C. 06-61

Dear Secretary Williams:

On behalf of Broadview Networks, Inc.; DSCI Corporation; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Metropolitan Telecommunications of Massachusetts, Inc., a/k/a MetTel; New Horizon Communications; and EarthLink Business f/k/a One Communications (collectively "the CLEC Coalition"), enclosed for filing are the following documents:

1. CLEC Coalition's Opposition to Verizon's Motion to Extend Compliance Period; and
2. CLEC Coalition's Opposition to Verizon's Motion for Extension of the Judicial Appeal Period.

An extra copy of this filing is also attached. Please date stamp and return it in the attached postage prepaid envelope. Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

/s/ Philip J. Macres

Philip J. Macres

Enclosures

cc: Paul Abbott, General Counsel
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**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts.	D.T.C. 06-61
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**CLEC COALITION’S OPPOSITION TO VERIZON’S
MOTION TO EXTEND COMPLIANCE PERIOD**

The CLEC Coalition¹ opposes Verizon New England Inc., d/b/a Verizon Massachusetts’ (“Verizon”) Motion to extend by 180 days the time allowed in the Order on Reconsideration issued by the Department on January 5, 2012 (“*Order*”) for Verizon to recalculate and submit avoided costs discount rates and calculate and submit the amount of refunds based on the revised rates for the true-up period beginning March 17, 2007 (“*Motion*”).

Verizon asserts that the additional 180 days is needed based on the “complexity of the work” involved in calculating the refunds owed to the CLECs that resold Verizon’s retail services since March 17, 2007. Yet Verizon fails to describe the number of Verizon employees it will devote to completing the refund calculation project. It could be that Verizon only plans to assign one or two people to handle it. Thus, if Verizon devoted more resources, then Verizon should be able to complete this project far sooner than in 180 days. Accordingly, the Department should deny Verizon’s Motion and order Verizon to devote the resources needed to determine

¹ The CLEC Coalition includes Broadview Networks, Inc.; DSCI Corporation; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Metropolitan Telecommunications of Massachusetts, Inc. d/b/a MetTel; New Horizon Communications; and EarthLink Business f/k/a One Communications.

the refunds such that these calculations are completed by the current February 27, 2012 deadline.²

If the Department does not wish to issue such a decision, the Department could, in the alternative, order Verizon to take a two-phase approach. For the first phase, the Department could order Verizon to file by February 27, 2012, its calculation of discount rates and refunds due to the CLEC Coalition members, and their affiliates, in accordance with the *Order*. Thirty (30) days is more than a sufficient amount of time for Verizon to do just that. Verizon requested the 180-day extension because of the amount of work involved in determining the refunds for “more than 100 CLECs” that resold Verizon retail services. According to Verizon, much of the work results from the fact that there are a large number of CLECs and that each CLEC may entail different problems in calculation. For example, Verizon contends that it: needs “to make unique adjustments to many individual wholesale customer accounts”; needs to take into account “resellers that have gone out of business, transferred their accounts to other companies and/or resolved billing or other disputes with Verizon...in a way that that affects their claim to a refund or the amount of a refund”, which would require Verizon to “identify each such instance and manually adjust the computer-generated refund amounts for the affected carriers.”³ Hence, within the proposed 30-day period, Verizon should be able to calculate the refunds due to the CLEC Coalition members, which is just a small fraction of all CLEC refunds Verizon has to determine.

² The Department’s January 24, 2012 Procedural Order issued in this case stated that “the time period for Verizon to file its calculation of discount rates and refunds due in accordance with the Order is extended for 30 days.” *See Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts, DTC. 06-61, Procedural Order, at 2 (Mass D.T.C. Jan. 24, 2012).* With the additional 30 days, Verizon’s compliance filing is therefore due on Monday, February 27, 2012. *See* 220 C.M.R. § 1.02(4).

³ Motion at 1-2.

For the second phase, the Department could order Verizon to submit within the 180 day time-period that Verizon seeks, the refunds due to all other CLECs. The CLEC Coalition proposes this two-phase approach because while the CLEC Coalition understands that Verizon has to determine refunds for “more than 100 CLECs”, the CLEC Coalition has been active in this case because of the importance of this case to each of the coalition members. For this reason, Verizon’s determination of refunds to each of the CLEC Coalition members should not have to wait until Verizon determines the refund calculation for all other CLECs that resold Verizon’s service since March 17, 2007 that did not participate in this case. Some of these CLECs are out of business, while others likely did not participate in this case because they only resold a few lines and therefore had little at stake. There is no basis for an extended further deferral of the resolution for the active participants while Verizon completes its refund calculations for the mass of resellers not interested enough to have participated.

For these reasons, the Department should deny Verizon’s Motion or grant limited relief as specified herein.

Respectfully submitted,

/s/ Philip J. Macres _____

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Dated: January 27, 2012

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts.	D.T.C. 06-61
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**CLEC COALITION’S OPPOSITION TO VERIZON’S
MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD**

The CLEC Coalition¹ opposes Verizon New England Inc., d/b/a Verizon Massachusetts’ (“Verizon”) Motion that the Massachusetts Department of Telecommunications and Cable (the “Department”) grant an extension of the judicial appeal period under state law with respect to the Order on Reconsideration dated January 5, 2012 (“*1/5/12 Reconsideration Order*”), until twenty (20) days after the Department approves revised discount rates and the amounts of refunds to resellers in this proceeding (“Motion”). For the following reasons, the Department should deny Verizon’s Motion.

First, the *1/5/12 Reconsideration Order* is a final order and contrary to Verizon’s characterizations, this Order should not be considered or deemed an interlocutory decision. As the Department is well aware, its original order in this case was issued on January 30, 2007.² On February 20, 2007, the CLEC Coalition filed a Motion for Reconsideration of the *1/30/07 Order*

¹ The CLEC Coalition includes Broadview Networks, Inc.; DSCI Corporation; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Metropolitan Telecommunications of Massachusetts, Inc. d/b/a MetTel; New Horizon Communications; and EarthLink Business f/k/a One Communications.

² *Investigation by the Dept. of Telecomms. and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep’t on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order at 1 (Mass. D.T.E. Jan. 30, 2007) (“1/30/07 Order”).*

pursuant to 220 C.M.R. § 1.11(10)³ and concurrently filed a Motion for Extension of the Judicial Appeal Period. Then, on March 7, 2007, the CLEC Coalition requested that the Department suspend Verizon's compliance tariff that contained the new resale discount rate. While the Department denied this latter request, the Department expressly acknowledged that its *1/30/07 Order* was a "final Order" but held that "should the CLEC Coalition prevail on its reconsideration request," Verizon's resale discount rates would be subject to "true-up".⁴ Therefore, Verizon's argument that the *1/5/12 Order on Reconsideration* should be treated as an interlocutory decision has no merit because it is a final order on reconsideration.

Second, Verizon's Motion for Clarification and Partial Reconsideration does not justify granting an extension of the judicial period. Verizon asserts that such an extension should be granted because its Motion for Clarification and Partial Reconsideration is "not merely ministerial or mechanistic, and the Department may be called upon to make additional substantive decisions in this proceeding."⁵ In addition, Verizon asserts extending the appeal period "until the Department approves new rates and refund amounts" is appropriate.⁶ But, as discussed above, the *1/5/12 Order on Reconsideration* is a final order. The Department has fully adjudicated the rights of the parties and left only the administrative process of review and approval of a compliance tariff and a determination of customer refunds. Linking an appeal of

³ Providing that "[w]ithin 20 days of service of a *final* Department Order, a party may file a motion for reconsideration." (emphasis added).

⁴ *Investigation by the Dep't of Telecomms. and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61-A, Letter Order at 1 & 2 (Mass. D.T.E. Mar. 16, 2007) ("Letter Order")*. See also Email from Tina Chin, Hearing Officer, Legal Division, D.T.E., to D.T.E. 06-61 Service list (dated Jan. 30, 2007) (stating that "Attached is an e-copy of the *final* Order in D.T.E. 06-61, Verizon Resale Tariff Proceeding.") (emphasis added).

⁵ Motion at 1.

⁶ *Id.* at 2.

the *1/5/12 Order on Reconsideration* with the compliance phase in this docket would unnecessarily delay the resolution of this case. Denial of Verizon's Motion is appropriate for these reasons.⁷ Moreover, the Department's rules do not allow for reconsideration of an order on reconsideration. Nor would it be proper to extend the judicial period until compliance rates are approved because doing so "would inappropriately shift the focus from the methodology" the Department applies in determining the resale discount rate to potentially "results-driven outcomes" which is contrary to Department precedent.⁸

Third, Verizon has failed to show good cause warrants granting its request to extend the judicial appeal period. The Department's procedural rule, 220 C.M.R. § 1.11(11), states that reasonable extensions of the appeal period "shall be granted upon a showing of good cause." However, "good cause is a relative term and depends on the circumstances of an individual

⁷ See *Petition of Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company requesting approval of their 2006 distribution rate adjustments under the "Simplified Incentive Plan" and "Capital Projects Scheduling List" program and their 2006 calculation of the "Inter-rate Stabilization Adjustment" in accordance with a settlement approved in D.T.E. 05-8, D.T.E./D.P.U. 06-82-B, Order on Amended Motion for Extension of the Judicial Appeal Period*, at 7, 2010 WL 5387775 (Mass. D.P.U. Dec. 20, 2010) (holding that the order in 06-82-A "was final", that it "fully adjudicated the rights of the parties", "left only the administrative process of review and approval of a compliance tariff and an amount for customer refunds", and that "linking an appeal" of the 06-82-A order to a "Department action...on the compliance phase...would unnecessarily delay final resolution" of this order).

⁸ See *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Appropriate Pricing, based upon Total Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20, Order on Motions Filed by Verizon for Extension of Compliance Filing Date and Time for Filing Petitions for Reconsideration, and to Extend the Judicial Appeal Period; by the CLEC Coalition for Extension of Time for Filing Petitions for Reconsideration until After Verizon's Compliance Filing and Leave to Electronically File Any Such Motions; and by WorldCom for the Immediate Adoption of Interim Rates, at 15-16 (Mass. D.T.E. Jul. 30, 2002).

case.”⁹ Whether good cause has been shown “is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party.”¹⁰ In addition, “[a] party's filing a contemporaneous motion for reconsideration does not, by itself, constitute good cause for an extension.”¹¹ Moreover, when a party has requested an extension of the judicial appeal period “without addressing any balancing of the relevant interests”, such requests have been denied.¹² Here, Verizon not only failed to address any balancing of the relevant interests, but also failed to state specifically in its Motion that “good cause” warrants granting it.

Even if the Department interprets Verizon’s Motion as implicitly addressing these interests (which it should not do), denial of Verizon’s Motion is still appropriate. The reasons stated above demonstrate this and denial would be consistent with the Department’s conclusion that “the broad public interest in promoting finality of Department decisions outweighs the

⁹ *Investigation by the Department of Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariffs: Boston Gas Company, M.D.T.E. Nos. 101.3 through 112.3, filed on September 15, 2006, to become effective November 1, 2006, D.T.E./D.P.U. 06-78-A, Order on Motion for Reconsideration and Extension of the Judicial Appeal Period, at 17, 2010 Mass. PUC LEXIS 23, at *27 (Mass. D.P.U. October 6, 2010) (citing *Boston Edison Company*, D.P.U. 90-335-A at 4 (1992)).*

¹⁰ *Id.* at 17-18.

¹¹ *Id.* at 18, 2010 Mass. PUC LEXIS 23, at *28-29 (citing *Berkshire Gas Company*, D.T.E. 01-56-A at 2 (2002) (other citation omitted)). Likewise, the mere filing of a post-final order motion for clarification does not constitute good cause for an extension of the judicial appeal period.

¹² *Id.* at 19, 2010 Mass. PUC LEXIS 23, at *30. *See also* *Petition of New England Gas Company, pursuant to G. L. c. 164, § 94, and 220 C.M.R. §§ 5.00 et seq., for a General Increase in Gas Rates*, D.P.U. 08-35, Order on Motion for Recalculation and Motion to Extend the Judicial Appeal Period, at 10, 2009 Mass. PUC LEXIS 24,*16-17 (Mass. D.P.U. June 22, 2009) (“*New England Gas 6/22/09 Order on Motion*”).

interests of those parties seeking an extension of the deadline for filing an appeal.”¹³ The *1/30/07 Order* was issued five years ago. The case has gone on far too long and therefore, it would be contrary to the public interest to grant Verizon’s request and allow any potential appeal be deferred until a later date. Indeed, “the balancing of competing interests favors finality, rather than extension.”¹⁴

For the foregoing reasons, the Department should deny Verizon’s Motion.¹⁵

Respectfully submitted,

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¹³ *Petition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, pursuant to General Laws Chapter 164, § 94, and 220 C.M.R. §§ 5.00 et seq. for approval of a rate settlement effective January 1, 2006*, D.T.E. 05-85, Order on Motions to Extend Appeal Period, at 4, 2006 Mass. PUC LEXIS 3, *8 (Mass. D.T.E. Jan. 30, 2006).

¹⁴ *New England Gas 6/22/09 Order on Motion*, at 4, 2009 Mass. PUC LEXIS 24,*16.

¹⁵ “The customary practice when parties file motions for extension of the judicial appeal period is to toll the period for the movant” until motion is ruled on. *See, e.g., Petition of KeySpan Energy Delivery New England dba National Grid for Approval of its Demand-Side Management/Market Transformation Plan for the five-year period January 1, 2008, through December 31, 2012*, D.P.U. 07-104-A, Order on Motions for Clarification, Reconsideration, Extension of Judicial Appeal Period and Compliance Filing, at 12, 2009 WL 1173654, at *6 (Mass. D.P.U. Apr. 27, 2009) (citing *Eastern Energy Corp. v. Energy Facilities Siting Board*, 419 Mass. 151, 154-55 (1994)). Because Verizon filed its Motion on January 18, 2012 or seven (7) calendar days before the deadline to file any judicial appeal pursuant to General Laws c. 25, § 5, the judicial appeal period should expire no later than seven (7) calendar days after the Department issues an order denying Verizon’s Motion.

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Massachusetts, Inc., a/k/a MetTel; New
Horizon Communications; and EarthLink
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Dated: January 27, 2012

CERTIFICATE OF SERVICE

I certify that on this 27th day of January, 2012 in D.T.C. 06-61, the CLEC Coalition's¹ Opposition to Verizon's Motion to Extend Compliance Period and the CLEC Coalition's Opposition to Verizon's Motion for Extension of the Judicial Appeal Period, along with the associated transmittal sent to the D.T.C., have been sent or are being sent to the individuals on the D.T.C. 06-61 service list as shown below via electronic mail and postage prepaid first-class U.S. mail, or via electronic mail only (if noted with two asterisks).

/s/ Philip J. Macres _____

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